KOG 1/10/17

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2017 JAN 17 PM 4:07
CLERK'S OFFICE
AT BALTIMORE
DEPUTY

JKMcD:HMG: USAO#2014R00621

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA **v.** **JOHN M. KAYS,** **MATTHEW S. BARROW and** **DANIELLE N. KAYS,** **Defendants.**	**CRIMINAL NO. ~~GLR-16-0307~~** **(Conspiracy (18 U.S.C. § 371);** **Bribery (18 U.S.C. § 201);** **False Statements (18 U.S.C. § 1001);** **Forfeiture.**

SUPERSEDING INDICTMENT

COUNT ONE

The Grand Jury for the District of Maryland charges that:

Introduction

1. At times material to this Superseding Indictment, the U.S. Army Communications-Electronics Command ("CECOM") was headquartered at Aberdeen Proving Ground ("APG"), Harford County, Maryland ("MD") and was comprised of approximately 13,000 military, civilian and contract personnel across five subordinate organizations, including the Software Engineering Center.

2. At all times material to this Superseding Indictment, the Program Executive Office Command Control Communications-Tactical ("PEO-C3T"), which was part of the Software Engineering Center, provided computer systems, radios and communications networks to Army personnel worldwide, including Iraq, Afghanistan, Africa, Syria, Pacific Theater and Europe.

3. At all times material to this Superseding Indictment, the Army used Indefinite Delivery Indefinite Quantity ("IDIQ") contracts most often for service contracts and architecture-engineering services. The Army typically chose multiple prime contractors who

were able to perform the contract for a fixed number of base years. The Army could then extend the contract for option years.

4. At all times material to this Superseding Indictment, the Army addressed individual requirements on IDIQ contracts by placing a delivery order ("DO") for supplies, or a task order ("TO") for services, against a basic contract. TOs and DOs were typically competitively bid on by the various prime contractors which had been selected at the time of the original IDIQ contract award.

5. In and around March 2006, the U.S. Army Contracting Command ("ACC") at APG awarded a 10-year, $19.2 billion IDIQ contract to seven (7) prime contractors to provide technology services to support the integrated engineering, business operations, and logistics needs for the Army.

6. In and around September 2006, the ACC at APG placed TO 8 for services pursuant to the IDIQ contract described in Paragraph 5.

7. In and around November 2006, the ACC at APG placed TO 11 for services pursuant to the IDIQ contract described in Paragraph 5.

8. In and around July 2009, the ACC at APG placed TO 77 for services pursuant to the IDIQ contract described in Paragraph 5.

9. In and around September 2009, the ACC at APG placed TO 73 for services pursuant to the IDIQ contract described in Paragraph 5.

10. In and around September 2010, the ACC at APG placed TO 24 for services pursuant to the IDIQ contract described in Paragraph 5.

11. In and around April 2011, the ACC at APG placed TO 115 for services pursuant to the IDIQ contract described in Paragraph 5.

12. In and around December 2010, the General Services Administration ("GSA"), awarded a contract for programmatic support services on behalf of the Army and the PEO-C3T ("the GSA contract").

13. At times material to this Superseding Indictment, **JOHN M. KAYS** ("**J. KAYS**") was a public official; he was a civilian employee of the United States Army who worked in leadership positions for PEO-C3T and represented the Army customer on the IDIQ contracts. Specifically,

a. From April 2008 – March 2010, **J. KAYS** was the Chief of Systems Engineering for the Project Management Office, Battle Command;

b. From March 2010 – January 2011, **J. KAYS** was the Project Director for Crypto and Networking Initialization, renamed Tactical Network Initialization;

c. From January 2011 – July 2014, **J. KAYS** was the Deputy Project Manager for Mission Command, in effect the number two position for Mission Command, until his resignation from government employment.

14. At times material to this Superseding Indictment, **DANIELLE N. KAYS** ("**D. KAYS**"), was a public official; she was a civilian employee of the United States Army who worked in leadership positions for PEO-C3T and represented the Army customer on the IDIQ contracts. Specifically,

a. From June 2009 – June 2012, **D. KAYS** was the Deputy Director, Technical Management Division;

b. From June 2012 – October 2015, **D. KAYS** was the Product Director of Common Hardware Systems, until her resignation from government employment.

15. At all times material to this Superseding Indictment, **D. KAYS** and **J. KAYS** were

married and lived together; beginning in 2009, they lived in Bel Air, MD at the **KAYS'** house.

16. At all times material to this Superseding Indictment, **MATTHEW S. BARROW** ("**BARROW**") and his wife were the owners of MJ-6, LLC ("MJ-6"), a limited liability corporation the **BARROW**s formed in Ohio ("OH") in 2008 to obtain military subcontracts. **BARROW** was the president of MJ-6.

17. From in and around June 2008 through in and around August 2010, **BARROW** was also employed as a Procurement Manager/Category Specialist, responsible for batch materials and industrial gases, for a glass company ("the glass company") in Northwood, OH.

18. At all times material to this Superseding Indictment, **BARROW** lived in Toledo, OH. Beginning in 2010, **BARROW** worked full time as president of MJ-6.

THE CHARGE

19. From in and around August 2008 to in and around June 2014, in the District of Maryland and elsewhere, the defendants

JOHN M. KAYS,
MATTHEW S. BARROW, and
DANIELLE N. KAYS

with others known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, and confederate to

a. Defraud the Department of the United States Army by impairing, impeding, and obstructing the lawful government function of the United States Army to procure and manage the procurement of goods and services, in contracting for services for PEO-C3T,

b. Commit offenses against the United States, specifically,

(1) being a public official, to directly and indirectly, corruptly demand, seek, receive, accept and agree to receive and accept anything of value personally and for any other person and

entity in return for (a) being influenced in the performance of any official act and (b) being induced to do and omit to do any act in violation of the lawful duty of such official, in violation of Title 18, U.S.C. § 201 (b)(2)(A) and (C).

(2) to, directly and indirectly, corruptly give, offer, and promise anything of value to a public official with intent to influence any official act, and to induce such public official to do or omit to do any act in violation of the lawful duty of such official, in violation of 18 U.S.C. Section 201(b) (1) (A) and (C).

OBJECT OF THE CONSPIRACY

20. It was the object of the conspiracy for **J. KAYS** and **D. KAYS** to enrich themselves by using and agreeing to use their official positions and by performing and agreeing to perform a stream of official acts in exchange for a stream of things of value, in the approximate amount of $800,000, going to and for the benefit of **J. KAYS** and **D. KAYS** from **BARROW**.

21. It was a further object of the conspiracy for **BARROW** to provide things of value to **J. KAYS** and **D. KAYS**, intending to influence **J. KAYS** and **D. KAYS** to take official actions for the benefit of **BARROW** and MJ – 6, including steering subcontracts to MJ-6 in the approximate amount of $21 million.

MANNER AND MEANS OF THE CONSPIRACY

22. It was a part of the conspiracy for **J. KAYS** and **D. KAYS** to take a stream of official actions favorable to **BARROW** and **BARROW**'s business MJ – 6 including adding MJ – 6 as a subcontractor acceptable to the Army customer, steering potential employees for government contractors to work for MJ-6, approving MJ-6 employees to work on various Task Orders, and approving the pay rates, status reports and travel reimbursements for MJ-6 employees. The Task

Orders described below were used by **J. KAYS** and **D. KAYS** for the benefit of MJ-6:

DATE	OFFICIAL ACTS	ACTOR
August 2008	Influenced a prime contractor to add MJ-6 as a subcontractor to the previously awarded TO 8	**J. KAYS**
May 2009	Influenced a prime contractor to add MJ – 6 as a subcontractor to the previously awarded TO 11	**J. KAYS**
July 2009	Influenced a prime contractor to include MJ – 6 as a subcontractor on its TO 77 contract proposal	**J. KAYS**
September 2009	Influenced a prime contractor to add MJ – 6 as a subcontractor to the previously awarded TO 73	**D. KAYS**
December 2010	Influenced a prime contractor to include MJ – 6 as a subcontractor on its TO 115 contract proposal	**J. KAYS**
March 2012	Influenced a prime contractor to add MJ – 6 as a subcontractor to the previously awarded TO 24	**D. KAYS**
August 2012	Influenced a prime contractor to add MJ – 6 as a subcontractor to the previously awarded GSA contract	**D. KAYS**

23. It was a part of the conspiracy for **BARROW** to confer on **J. KAYS** and **D. KAYS** a stream of benefits by causing the glass company to enter into contracts and make payments to a company, Transportation Logistics Services, LLC, ("TLS") incorporated by **J. KAYS**.

24. It was a part of the conspiracy for **BARROW** to confer on **J. KAYS** and **D. KAYS** a stream of benefits by delivering cash payments to **J. KAYS** which **BARROW** had withdrawn from MJ-6 and personal bank accounts.

25. It was a part of the conspiracy for **J. KAYS, D. KAYS** and **BARROW** to hide their corrupt relationship from the United States Army and others including making payments from **BARROW** to **J. KAYS** through the glass company and TLS relationship, and later in cash rather than checks or electronic transfers; **BARROW's** making cash withdrawals in amounts less than $10,000 to avoid federal cash transaction reporting requirements, and **J. KAYS** and **D. KAYS** omitting the declaration of their receipt of cash on Government ethics forms.

OVERT ACTS

26. In furtherance of the conspiracy and to effect its objects, the defendants committed the following overt acts in the State of Maryland and elsewhere:

a. On or about September 8, 2009, **D. KAYS** sent an email to a government contracting officer's representative attaching a resume of a person to be hired as an MJ-6 employee.

b. On or about August 11, 2010, **J. KAYS** sent an email to a prime contractor regarding an MJ-6 employee using Task Order 11.

c. On or about January 10, 2011, **BARROW** flew from Detroit, Michigan ("MI") to Baltimore, MD.

d. On or about January 11, 2011, **BARROW** withdrew $10,000 cash from an MJ – 6 bank account in Aberdeen, MD.

e. On or about January 13, 2011, **J. KAYS** paid $3,400 in cash to a contractor performing work in the **KAYS'** house.

f. On or about March 16, 2011, **D. KAYS** paid $3,400 in cash to a contractor performing work on the **KAYS'** house.

g. On or about June 16, 2011, **BARROW** withdrew $9,000 cash from a personal bank account.

h. On or about June 20, 2011, **BARROW** withdrew $9,000 cash from a personal bank account.

i. On or about June 20, 2011, **BARROW** e-mailed **J. KAYS** stating, "John, I want to confirm our meeting for tomorrow… I can be at APG at 1030 or we can meet for lunch…"

j. On or about June 21, 2011, **BARROW** flew from Detroit, MI to Baltimore, MD.

k. On or about June 23, 2011, **J. KAYS** purchased two new vehicles, a 2011 Nissan Armada for $49,950 and a 2011 Nissan Maxima for $36,000, at an auto dealership in Bel Air, MD using $10,000 in cash as part of his down payment.

l. On or about July 8, 2011, **J. KAYS** approved government reimbursement for **BARROW'S** proposed travel from Ohio to Maryland on July 19, 2011 related to Task Order 115.

m. On or about July 12, 2011, **BARROW** withdrew $9,500 in cash from Citizens Bank in Toledo, OH.

n. On or about July 13, 2011, **BARROW** withdrew $9,500 in cash from Citizens Bank in Toledo, OH.

o. On or about July 15, 2011, **BARROW** withdrew $7,000 in cash from Citizens Bank in Sylvania, OH.

p. On or about July 16, 2011, **BARROW** withdrew $6,000 from Citizens Bank in Sylvania, OH.

q. On or about July 19, 2011, **BARROW** flew from Detroit, MI to Baltimore, MD at 7:30 EST.

r. On or about July 19, 2011, **J. KAYS** paid $5,000 cash towards his vehicle loans at Maryland Federal Credit Union ("MFCU").

s. On or about July 19, 2011, **J. KAYS** paid $5,000 cash towards a credit card bill at Aberdeen Proving Ground Federal Credit Union ("APG-FCU").

t. On or about August 15, 2011, **BARROW** withdrew $9,800 in cash at Citizens Bank.

u. On or about August 19, 2011, **BARROW** withdrew $9,900 cash at Citizens Bank.

v. On or about August 22, 2011, **BARROW** withdrew $2,500 cash from Citizens Bank.

w. On or about August 22, 2011, **J. KAYS** e-mailed **BARROW** with the subject line

"Directions" in an e-mail stating "Off I-95… Exit 67 B… 8200 Perry Hall Blvd, White Marsh, MD".

x. On or about September 1, 2011, **J. KAYS** paid $1,550 cash towards his APG-FCU credit card bill, and $3,000 cash towards his vehicle loans at MFCU.

y. On or about April 13, 2012, **D. KAYS** purchased a 2012 Yamaha AR 240 power boat for $46,700 from a marina in Middle River, MD and paid $7,000 cash as part of her down payment.

z. On or about April 18, 2012, **D. KAYS** purchased $2,184.80 in jewelry, including a set of 18 karat, white gold, box style, hoop earrings from a diamond center in Bel Air, MD, and paid $2,200 in cash.

aa. On or about May 12, 2012, **D. KAYS** made a $9,440 cash payment toward her Yamaha power boat.

bb. On or about August 16, 2012, **BARROW** withdrew $4,000 cash at PNC Bank.

cc. On or about August 20, 2012, **BARROW** withdrew $5,000 cash from Fifth Third Bank.

dd. On or about August 29, 2012, **D. KAYS** paid $5,667 in cash for a pool party at her country club.

18 U.S.C. § 371

COUNT TWO

The Grand Jury for the District of Maryland further charges:

1. The allegations of Count One, Paragraphs One – Eighteen and Twenty– Twenty-Five are incorporated by reference.

2. From in and around August 2008 to in and around July 2014, in the District of Maryland,

JOHN M. KAYS and DANIELLE N. KAYS

as public officials, directly and indirectly did corruptly seek, receive, accept and agree to receive and accept things of value, that is cash from **BARROW** in the approximate amount of $501,400, and payments directed by **BARROW** from the glass company to TLS conferring profits in the approximate amount of $331,000, in return for being induced to do or omit to do any act in violation of the official duty of such officials or persons, that is the awarding of subcontracts on Task Orders to MJ-6, including on Task Order 8, Task Order 11, Task Order 73, Task Order 77, Task Order 115, Task Order 24 and the GSA contract in the approximate value of $21 million.

18 U.S.C. § 201(b)(2)(A) and (C)

COUNT THREE

The Grand Jury for the District of Maryland further charges:

1. The allegations of Count One, Paragraphs One – Eighteen and Twenty – Twenty-Five are incorporated by reference.

2. From in and around August 2008 to in and around July 2014 in the District of Maryland,

MATTHEW S. BARROW

directly and indirectly corruptly gave, offered, and promised things of value to public officials, namely **JOHN M. KAYS** and **DANIELLE N. KAYS** with intent to influence official acts in awarding and use of MJ-6 on subcontracts for PEO-C3T Task Order 8, Task Order 11, Task Order 73, Task Order 77, Task Order 115, Task Order 24 and the GSA contract with an approximate value of $21 million and to induce **JOHN M. KAYS** and **DANIELLE N. KAYS** to do and omit to do acts in violation of their lawful duties.

18 U.S.C. § 201(b)(1)(A) and (C)

COUNTS FOUR-SEVEN

The Grand Jury for the District of Maryland further charges:

1. The allegations of Count One, Paragraphs One –Eighteen and Twenty– Twenty-Five are incorporated by reference.

2. At all times material to this Superseding Indictment, **JOHN M. KAYS** and **DANIELLE N. KAYS** were each required to file on an annual basis a confidential financial disclosure report, also known as an Office of Government Ethics (OGE) Form 450. The purpose of the report was to assure that government employees and their agencies avoided conflicts of interest between the employee's official duties and their private financial interests or affiliations. **JOHN M. KAYS** and **DANIELLE N. KAYS** were required to file their Form 450 reports no later than February 15 of each calendar year, and they were required to report information for the preceding calendar year (January 1 – December 31).

3. On or about the dates set forth below, in the District of Maryland, the defendants named below, in a matter within the jurisdiction of the executive branch of the government of the United States knowingly and willfully made a materially false, fictitious and fraudulent statement and representation by stating on his or her OGE-450 that he or she had no gifts, receipts, non-investment income, or arrangements when in truth and in fact, each defendant then and there well knew that he or she had received cash payments from **BARROW** in the previous year:

COUNT	DATE SUBMITTED	TIME PERIOD COVERED	DEFENDANT CHARGED
Four	January 30, 2012	1/1/2011 – 12/31/2011	**JOHN M. KAYS**
Five	January 7, 2013	1/1/2012 – 12/31/2012	**JOHN M. KAYS**
Six	February 27, 2012	1/1/2011 – 12/31/2011	**DANIELLE N. KAYS**
Seven	February 12, 2013	1/1/2012 - 12/31/2012	**DANIELLE N. KAYS**

18 U.S.C. §1001

FORFEITURE

The Grand Jury further finds that:

1. As a result of the offenses set forth in Counts One -Three the defendants,

JOHN M. KAYS;
DANIELLE N. KAYS and
MATTHEW S. BARROW;

shall forfeit to the United States all property, real or personal, which constitutes or is derived from proceeds traceable to the conspiracy to defraud the United States and to commit bribery, and bribery, including but not limited to, the following:

(a) a sum of money equal to the value of the proceeds of the offense, which amount is at least $2,000,000;

2. As a result of the offenses set forth in Counts One –Two, the defendants,

JOHN M. KAYS and **DANIELLE N. KAYS**

shall forfeit to the United States all property, real or personal, which constitutes or is derived from proceeds traceable to the conspiracy to defraud the United States and commit bribery, and bribery including but not limited to, the following:

(a) up to $135,000 in home improvements made to the **KAYS'** house, real property located at 1314 Valley Oak Way, Bel Air, MD;

(b) a 2011 Nissan Armada Platinum 4x4, Vehicle Identification # 5N1AA0NE2BN614832, bearing Maryland license plate 5CH1731, registered to **JOHN KAYS**;

(c) a 2012 BMW 535XI, Vehicle Identification # WBAFU7C5XCDU65930, bearing Maryland license plate 5AV6101, registered to **JOHN KAYS**;

(d) a 2012 Yamaha AR 240 power boat, Hull Identification # YAMCJ139K112, Vessel Identification # MD0019CF; registered to **DANIELLE KAYS**;

(e) a set of 18 karat, white gold, box style, hoop earrings with round, H, S.I. diamonds;

3. As a result of the offenses set forth in Counts One and Three, the defendant,

MATTHEW S. BARROW

shall forfeit to the United States all property, real or personal, which constitutes or is derived from proceeds traceable to the conspiracy to defraud the United States and to commit bribery, and bribery, including but not limited to, the following:

(a) the real property located at 2621 Liverpool Court, Toledo, OH;

(b) the real property located at 3646 Confederate Drive, Lakeside-Marblehead, OH;

(c) a 2016 GMC Yukon SLT, Vehicle Identification # 1GKS2BKC1GR177981, license plate # GRJ7552, registered to **MATTHEW BARROW**;

(d) a 2015 Buick Enclave, Vehicle Identification # 5GAKVCKD8FJ131645, license plate # GJK8638;

(e) a 2011 GMC Yukon Denali, Vehicle Identification # 1GKS2EEF0BR397662, license plate # FJD1776, registered to **MATTHEW BARROW**;

(f) a 2007 Sea Ray 290 power boat, Hull Identification # SERR3401E707, Vessel Identification # OH0002FK, registered to **MATTHEW BARROW**;

(g) a Yamaha FX HO WaveRunner, Hull Identification# YAMA2407A313, Vessel Identification# OH0277FF, registered to **MATTHEW BARROW**;

(h) any and all funds, up to $450,000, in the Fifth Third Bank savings account, number ****0155, in the name of **MATTHEW BARROW**.

(i) any and all funds, up to $500,000, in the Fifth Third Bank checking account, number ****5013, in the name of **MATTHEW BARROW**.

(j) any and all funds, up to $600,000, in the USAA Bank checking account, number

****3271, in the name of **MATTHEW BARROW**.

4. Pursuant to Rule 32.2, Fed. R. Crim. P., notice is hereby given to the defendants that the United States will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, § § 981 and 982, in the event of the defendants' conviction under Counts One – Three.

SUBSTITUTE ASSETS

5. If any of the assets described in this Superseding Indictment as being subject to forfeiture, as a result of any act or omission of the defendants,

JOHN M. KAYS;
DANIELLE N. KAYS and
MATTHEW S. BARROW;

(a) cannot be located upon the exercise of diligence;

(b) have been transferred, or sold to, or deposited with a third person;

(c) have been placed beyond the jurisdiction of the Court;

(d) have been substantially diminished in value; or

(e) have been commingled with other property which cannot be subdivided without difficulty;

It is the intent of the United States, pursuant to Title 18, United States Code § § 981 and 982, and Title 21, United States Code § 853, to seek forfeiture of any other property of the defendants up to the value of at least **$2,000,000**.

18 U.S.C. § 981 (a)(1)(C);18 U.S.C. § 982 (a)(2); 21 U.S.C. § 853; 28 U.S.C. § 2461(c)

Rod J. Rosenstein /jkmcd
Rod J. Rosenstein
United States Attorney

A TRUE BILL:

SIGNATURE REDACTED

Foreperson

JAN 17, 2017
Date